## Remarks

All of the rejections are improper because the Final Office Action has misinterpreted various claim limitations, including those directed to verifying a reporting node and to reporting unsuccessful data transmissions. That is, the cited assessment of data downloads is based upon a source node that provides the download and not a receiving node that generates a report. In addition, the cited confirmation of a *successful* download does not correspond to the claimed transmission made in response to an *unsuccessful* communication (download). Moreover, the cited node elimination is based upon speed-based data communication errors and involves determining pass/fail characteristics as to whether a node is either valid or invalid, and does not provide any degree of measure of trustworthiness for subsequent node use. The following addresses these matters in greater detail.

In the Final Office Action dated January 7, 2009, the following rejections are indicated: claims 1-29 and 32-34 stand rejected under 35 U.S.C. § 102(e) over the Yu reference (U.S. Patent Pub. 2003/0061287); and claims 30-31 stand rejected under 35 U.S.C. § 103(a) over the '1287 reference in view of the Ritchie reference (U.S. Patent Pub. 2002/0194319). As the Final Office Action appears to have repeated all claim rejections from the prior Office Action of record, Applicant maintains the traversals as presented in Applicant's prior response of record, and submits that the (uncontested) record has established that the cited portions of the '1287 reference do not correspond to the claimed invention. In this discussion set forth below, Applicant traverses all rejections and does not acquiesce to any rejection or averment in this Office Action unless Applicant expressly indicates otherwise.

The § 102(e) rejections are improper because the cited portions of the '1287 reference fail to provide correspondence to multiple claim limitations. Generally, the '1287 reference addresses data communication errors by eliminating unreliable nodes and reporting successful downloads (*see, e.g.*, step 138 in Fig. 3C, and paragraph 0042). The described reliability relates to a node's ability to transmit a file, as may be relative to speed and connectivity (*see, e.g.*, paragraph 0007). Based upon each node's ability to transmit files, the '1287 reference carries out node elimination to promote the speed at which data can be transmitted across multiple nodes (*i.e.*, bandwidth), as consistent with

its stated purpose (*see*, *e.g.*, paragraphs 0008-0010). This elimination involves a pass/fail approach, where a node is either used or eliminated. To facilitate this purpose, successful downloads are reported (item 152 of FIG. 3D), as described at paragraph 0045. All node evaluation is performed upon source nodes that provide data.

In this context, the cited portions of the '1287 reference fail to disclose various aspects of the claimed invention, including those directed to verifying individual error reports from reporting nodes that identify erroneous transmissions and using reliability characteristics of the reporting nodes. Referring to claim 12 by way of example, the claimed degrading of a trustworthy-measure is "associated with the reporting node" that receives an information file from a source node and generates a report based upon that file. The assessment and elimination of source nodes in the cited '1287 reference does not provide correspondence to the claimed assessment and grading of reporting nodes with related report verification. For instance, paragraphs 0020 and 0025 of the '1287 reference, cited in connection with the rejection of claim 12, are not concerned with determining a trustworthy characteristic of a reporting node, and do not mention anything about assessing a report. The portions of the '1287 reference cited with the rejections of claims 17 and 18 similarly fail to provide specific correspondence to limitations directed to assessing the reliability of a reporting node in "determining the validity of the report." That is, the alleged node reliability determination relative to cited figures 3C and 3E (and at paragraph 0009) is made based upon the ability of a node to deliver content, and has no bearing upon a report or validity of such a report.

The cited portions of the '1287 reference also fail to provide correspondence to various other limitations, including those directed to the detection of a degree of trustworthiness related to data modification, which can be effective irrespective of a node's ability to deliver data. The cited "report" in item 152 of FIG. 3D is further unrelated to the claimed approach to reporting abnormal or otherwise erroneous communications, as may relate to intentional data corruption. For example, the "report" in cited FIG. 3D of the '1287 reference provides no correspondence to the claimed "transmitting an error report" in claim 1, which is made "when at least one of the following occur: the associated code does not correspond to the identifying code, and the content of the information file is abnormal; thereby facilitating a reduction of the

trustworthy-measure associated with the source node." This is consistent with paragraph 0020 of the published version of the instant application, which discusses verification "that the difference was not caused by a communication error" and transmits an error code when "the target determines that the difference was not caused by a communication error."

The cited portions of the '1287 reference further fail to provide correspondence to limitations directed to determining a measure (degree) of trustworthiness and using a node after it has been degraded according to the trustworthiness. As discussed above, the '1287 reference determines that a node is either good or bad, and provides no measure or degrading of a measure. The Final Office Action's attempt to interpret these limitations in a manner that is inconsistent with the specification of the claimed invention (in the Response to Arguments) is contrary to the M.P.E.P. and applicable law (*see, e.g.*, M.P.E.P. § 2011, indicating that "the pending claims must be 'given their broadest reasonable interpretation consistent with the specification.'" in citing *Phillips v. AWH Corp.*, 415 F.3d 1303, (Fed. Cir. 2005)). Specifically, the Final Office Action's interpretation of the claimed measure of trustworthiness, and the grading of such a measure as involving a pass/fail type characteristic directly contradicts Applicant's specification and any reasonable interpretation as consistent with the M.P.E.P. The cited '1287 reference thus provides no correspondence to limitations such as those directed to "degrading a trustworthy-measure" as in claims 5 and 10. Moreover, as the '1287 reference eliminates nodes (rather than downgrades), it fails to provide correspondence to limitations directed to subsequently accessing nodes that have been degraded as in claim 13.

In view of the above, the §102(e) rejection of claims 1-29 and 32-34 is improper because the '1287 reference fails to disclose limitations in each of the claims. Applicant further submits that the § 103(a) rejection of claims 30-31 is improper because the rejection relies upon the above-discussed misinterpretation of the primary '1287 reference, such that the combination of the secondary '4319 reference with the '1287 reference also fails to provide teaching or suggestion of all limitations in claims 30-31.

Applicant further submits that the § 103 rejection is improper because the '1287 reference teaches away from the proposed combination of references and any modification

of the '1287 reference to arrive at the same. As consistent with M.P.E.P. § 2143.01, *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1742 (2007), and *In re Gordon*, 733 F.2d 900 (Fed. Cir. 1984), a §103 rejection cannot be maintained when the asserted modification undermines purpose of the main reference, and such teaching away is evidence of non-obviousness. In *KSR,* the Supreme Court looked favorably on the treatment of teaching away stating, "when the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be non-obvious." In this instance, the '1287 reference eliminates nodes based upon data transmission errors. Accordingly , the '1287 reference teaches away from the claimed approach to generating an error report that is specifically made to avoid reporting data transmission errors (*i.e.*, "upon determining that the information file errors were caused during transmission" as in claim 31), which can facilitate the detection of malicious tampering. The § 103(a) rejections of claims 30-31 are therefore also improper for these reasons, and should be removed.

In view of the remarks above, Applicant believes that each of the rejections has been overcome and the application is in condition for allowance. Should there be any remaining issues that could be readily addressed over the telephone, the Examiner is asked to contact the agent overseeing the application file, Peter Zawilski, of NXP Corporation at (408) 474-9063.

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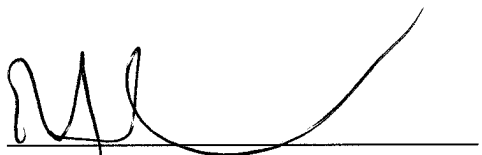
By: 
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